

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., MOTOROLA
MOBILITY, INC., and GENERAL
INSTRUMENT CORPORATION,

Defendants.

CASE NO. C10-1823-JLR

**DEFENDANTS' MOTION TO
REDACT TRANSCRIPT OF
APRIL 11, 2012 HEARING**

**NOTED ON MOTION CALENDAR:
May 18, 2012**

I. INTRODUCTION

Pursuant to the Western District of Washington General Order No. 08-02 (General Order in Regards to Transcript Redaction), Defendants Motorola, Inc. (now Motorola Solutions, Inc.), Motorola Mobility, Inc. and General Instrument Corporation (collectively, "Motorola") respectfully request that certain portions of the transcript of the April 11, 2012 hearing on Microsoft's Motion for a Temporary Restraining Order and Preliminary Injunction (entitled "Argument on TRO") be redacted to obscure confidential business information. A redacted copy of the transcript is attached hereto as Exhibit A.

II. BACKGROUND

On May 1, 2008, the Western District of Washington issued General Order No. 08-02, which establishes procedures for parties to request redaction of transcripts of court hearings. In

1 accordance with paragraph 4, on April 16, 2012, Motorola filed its Notice of Intent to Request
2 Redaction. (ECF No. 278.) Paragraph 5 of General Order No. 08-02 specifies that:

3 If redaction is requested, a party is to submit to the court reporter or transcriber,
4 within 20 calendar days of the transcript's delivery to the clerk, a statement
5 indicating where the personal data identifiers to be redacted appear in the
6 transcript. The court reporter or transcriber must redact the identifiers as directed
7 by the patty. These procedures are limited to the redaction of the specific
8 personal data identifiers listed in the rules. ***If an attorney wishes to redact
additional information, he or she may make a motion to the court.*** The
transcript will not be made public until the court has ruled on any such motion,
even though the 90-day restriction period may have ended.

9 W.D. Wash. Gen. Order 08-02 (emphasis added).

10 Microsoft Corporation ("Microsoft") and Motorola entered into a stipulated Protective
11 Order, which was approved by the Court on July 21, 2011. (ECF No. 72.) This Protective Order
12 outlines categories of material that should be maintained in confidence. For example, paragraph 1
13 specifies that:

14 Confidential Business Information is information which has not been made public
15 and which concerns or relates to the trade secrets ... amount or source of any
16 income, profits, losses, or expenditures of any person, firm, partnership,
17 corporation, or other organization, the disclosure of which information is likely to
18 have the effect of causing substantial harm to the competitive position of the
19 person, firm, partnership, corporation, or other organization from which the
information was obtained....

18 *Id.* at 1-2. Additionally, paragraph 6 specifies that:

20 (1) Confidential Business Information pertaining to licensing or other
commercially sensitive financial information shall not be made available under
21 this paragraph 6 to such designated in-house counsel; the supplier shall designate
22 such Confidential Business Information pertaining to licensing or other
commercially sensitive financial information as "[SUPPLIER'S NAME]
23 CONFIDENTIAL FINANCIAL INFORMATION – OUTSIDE ATTORNEYS'
EYES ONLY – SUBJECT TO PROTECTIVE ORDER" and promptly provide a
24 redacted version of such document that may be disseminated to the two in-house
counsel designated under this paragraph 6....

25 *Id.* at 4.
26

1 Federal law recognizes that courts should protect trade secrets or other confidential
 2 commercial information by reasonable means. *See* Fed. R. Civ. P. 26(c)(1)(G) (stating that a court
 3 may require that “a trade secret or other confidential research, development, or commercial
 4 information not be revealed or be revealed only in a specified way”).

5 Though courts recognize a general right to inspect and copy public records and documents,
 6 including judicial records, the United States Supreme Court has stated that this right is limited.
 7 “[T]he right to inspect and copy judicial records is not absolute. Every court has supervisory
 8 power over its own records and files, and access has been denied where court files might have
 9 become a vehicle for improper purposes.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598
 10 (1978). In discussing examples of improper purposes, the Court indicated that courts are not to
 11 serve as “sources of business information that might harm a litigant’s competitive standing.” *Id.*

12 As the Ninth Circuit stated:

13 The law, however, gives district courts broad latitude to grant protective orders to
 14 prevent disclosure of materials for many types of information, including, but not
 15 limited to, trade secrets or other confidential research, development, or
 16 commercial information. *See* Fed. R. Civ. P. 26(c)(7). Rule 26(c) authorizes the
 17 district court to issue “any order which justice requires to protect a party or person
 18 from annoyance, embarrassment, oppression, or undue burden.” The Supreme
 Court has interpreted this language as conferring “broad discretion on the trial
 court to decide when a protective order is appropriate and what degree of
 protection is required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984).

19 *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002).

20 **III. THE PROTECTIVE ORDER BOTH PERMITS AND REQUIRES** 21 **MOTOROLA TO FILE THIS MOTION FOR REDACTION**

22 In accordance with the Protective Order and the above-referenced authority, Motorola
 23 moves to redact portions of the transcript of the April 11, 2012 hearing because those portions of
 24 the transcript contain detailed information regarding: (1) confidential communications between
 25 Motorola and Microsoft; and (2) confidential financial information, including confidential
 26 negotiations between Motorola and third parties. This business information is highly confidential

1 and proprietary, and is covered by the Protective Order in this case. Disclosure of this proprietary
 2 and confidential information to third parties would have the potential to lead to competitive harm.
 3 Motorola has identified for redaction only those portions of the transcript that disclose this highly
 4 confidential information. Redactions were made to limit as little information as possible, leaving
 5 the remainder available for public review. Specifically, Motorola asks that the court redact:

6 Page 13, Lines 9-14, from after “restraining order,” on Line 9 through just before
 7 “And we know” on Line 14;

8 Page 24, Lines 14-15, from after “did make,” on Line 14 through just before “and
 9 said this should be” on Line 15;

10 Page 24, Line 17, from after “thinking about the” through just before “that
 11 Microsoft”;

12 Page 24, Line 23, from after “turn down the” through the end of the line;

13 Page 36, Lines 5-6, from after “almost always happens.” on Line 5 through the
 14 end of Line 7; and

15 Page 43, Line 5-7, from after “\$300 million and” on Line 5 through just before
 “And by the way,” on Line 7.

16 Attached as Exhibit A to this Motion is a copy of the transcript identifying those portions of the
 17 transcript that contain confidential and highly confidential business information, which Motorola
 18 asks the court to order redacted.

19 IV. CONCLUSION

20 For the foregoing reasons, Motorola respectfully requests that this Court order that the
 21 portions of the transcript of the April 11, 2012 hearing on Microsoft’s Motion for a Temporary
 22 Restraining Order and Preliminary Injunction that Motorola has identified in this Motion and in
 23 Exhibit A be redacted, and that the unredacted transcript be filed under seal.

1 DATED this 7th day of May, 2012.

2 Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 7th day of May, 2012.

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